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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

<p>Aaron Kozacki individually and on behalf of others similarly situated</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>CrossCheck, Inc.</p> <p style="text-align: center;">Defendant.</p>	<p><b>Case No: <u>'13CV0524 MMAKSC</u></b></p> <p><b>Class Action Complaint For Damages</b></p> <p><b>Jury Trial Demanded</b></p>
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**INTRODUCTION**

- The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter “FDCPA”), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt

1 collection practices are not competitively disadvantaged, and to promote  
2 consistent State action to protect consumers against debt collection abuses.

3 2. The California legislature has determined that the banking and credit system  
4 and grantors of credit to consumers are dependent upon the collection of just  
5 and owing debts and that unfair or deceptive collection practices undermine  
6 the public confidence that is essential to the continued functioning of the  
7 banking and credit system and sound extensions of credit to consumers. The  
8 Legislature has further determined that there is a need to ensure that debt  
9 collectors exercise this responsibility with fairness, honesty and due regard  
10 for the debtor's rights and that debt collectors must be prohibited from  
11 engaging in unfair or deceptive acts or practices.

12 3. Aaron Kozacki, (Plaintiff), through Plaintiff's attorneys, brings this action to  
13 challenge the actions of CrossCheck, Inc., ("Defendant"), with regard to  
14 attempts by Defendant to unlawfully and abusively collect a debt allegedly  
15 owed by Plaintiff, and this conduct caused Plaintiff damages.

16 4. Plaintiff makes these allegations on information and belief, with the exception  
17 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which  
18 Plaintiff alleges on personal knowledge.

19 5. While many violations are described below with specificity, this Complaint  
20 alleges violations of the statutes cited in their entirety.

21 6. Unless otherwise stated, all the conduct engaged in by Defendant took place  
22 in California.

23 7. Any violations by Defendant were knowing, willful, and intentional, and  
24 Defendant did not maintain procedures reasonably adapted to avoid any such  
25 violation.

#### 26 JURISDICTION AND VENUE

27 8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1332, 15 U.S.C. §  
28 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

9. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").

10. Because Defendant does business within the State of California, personal jurisdiction is established.

11. Venue is proper pursuant to 28 U.S.C. § 1391.

12. At all times relevant, Defendant conducted business within the State of California.

### PARTIES

13. Plaintiff is a natural person who resides in the City of Chula Vista, State of California.

14. Defendant is located in the City of Petaluma, in the State of California.

15. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

16. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

17. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

18. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).

19. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

#### FACTUAL ALLEGATIONS

20. On or about November 10, 2012 Plaintiff purchased a vehicle from Perry Ford (hereinafter “Perry”).

21. As part of the purchase agreement, Plaintiff provided Perry two personal checks, one for \$150.00 and the other for \$1,250.00 to be held as collateral until Plaintiff provided the same amount in cash for the down payment on the purchase of a vehicle.

22. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).

23. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).

24. Prior to Plaintiff providing the cash to Perry as the two previously agreed, Perry attempted to deposit the checks and they were returned for non-sufficient funds, causing Plaintiff to incur bank charges.

25. Subsequently, but before December 25, 2012, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.

26. On or about December 25, 2012, Defendant mailed a dunning letter to Plaintiff regarding the \$150.00 check.

27. On or about December 27, 2012, Defendant mailed a similar dunning letter to Plaintiff regarding the \$1,250.00 check.

28. A few days later, Plaintiff received those letters.

29. Defendant, a third party debt collector, failed, in the first written notice initially addressed to Plaintiff's California address in connection with collecting the alleged debt by Defendant, pursuant to Cal. Civ. Code § 1812.700, and in the manner prescribed by Cal. Civ. Code § 1812.700(b) and Cal. Civ. Code § 1812.701(b), to provide a notice to Plaintiff as prescribed in Cal. Civ. Code § 1812.700(a). Consequently, pursuant to Cal. Civ. Code § 1812.702, this omission by Defendant violated the Rosenthal Act.

30. Furthermore, the dunning letters stated that it was their "policy to report all unpaid checks to Equifax Information Systems." However, Crosscheck has not reported any such information to Equifax.

31. Through this conduct, Defendant used a false, deceptive, or misleading representation or means in connection with the collection of a debt. Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. § 1692e(10).

32. Through this conduct, Defendant threatened to take action that cannot legally be taken or that is not intended to be taken. Consequently, Defendant violated 15 U.S.C. § 1692e(5).

33. Additionally, the dunning letters stated that if the requested amount was paid, Plaintiff's name would be removed from Defendant's "National Negative Data Files."

34. This statement was intended to imply that there was another reporting system, other than the three major credit bureaus that Defendant had reported derogatory information to, which was a lie, and if it were true, Defendant has no right to publish such a list of debtors.

35. Through this conduct, Defendant used a false, deceptive, or misleading representation or means in connection with the collection of a debt.

1 Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. §  
2 1692e(10).

3 36. Through this conduct, Defendant threatened to take action that cannot legally  
4 be taken or that is not intended to be taken. Consequently, Defendant violated  
5 15 U.S.C. § 1692e(5).

6 37. Furthermore, the letters failed to inform Plaintiff that in order to trigger  
7 Defendant's requirement to obtain validation, Plaintiff was required to notify  
8 Defendant "in writing." Defendant's notice left out that requirement.

9 38. Defendant failed within five days after its initial communication with  
10 Plaintiff, to provide written notification containing a statement that unless  
11 Plaintiff, within thirty days after receipt of that notice, disputed the validity of  
12 the debt, or any portion thereof, Defendant would assume the debt was valid,  
13 or failed within five days after its initial communication with Plaintiff to  
14 provide a written notice containing a statement that if Plaintiff notified  
15 Defendant in writing, within the thirty-day period that the debt, or any portion  
16 thereof, was disputed, Defendant would obtain verification of the debt or a  
17 copy of a judgment against Plaintiff and a copy of such verification or  
18 judgment would be mailed to Plaintiff by Defendant and that Defendant  
19 would provide Plaintiff with the name and address of the original creditor.  
20 This omission by Defendant violated 15 U.S.C. § 1692g.

21 39. Because this omission violated the language in 15 U.S.C. § 1692g, Defendant  
22 also violated Cal. Civ. Code § 1788.17 as it incorporates 15 U.S.C. § 1692g.

### 23 CLASS ALLEGATIONS

24 40. Plaintiff brings this action on behalf of himself and on behalf of and all others  
25 similarly situated (the Class"). The proposed Class that Plaintiff seeks to  
26 represent is defined as follows:  
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- All persons within California who were sent a letter similar to the December 25, 2012 and December 27, 2012 letters sent to Plaintiff by Defendants within the last year from the filing of this complaint.

41. Plaintiff represents, and is a member of, the Class, because Plaintiff was sent the December 25, 2012 and December 27, 2012 letters by Defendant.

42. Defendant, its employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believes The Class members number in the hundreds if not thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of this matter.

43. Plaintiff and members of The Class were harmed by the acts of Defendant in at least the following ways:

- Defendant misrepresented the rights of the Class members by misstating and excluding notices that are required under the Fair Debt Collection Practices Act.

44. This suit seeks only statutory damages on behalf of The Class and it expressly is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand The Class definition to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.

45. The joinder of The Class members is impractical and the disposition of their claims in the Class action will provide substantial benefits both to the parties and to the court. The Class can be identified through Defendant's records.

46. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact to The Class predominate over questions which may affect individual Class, including, but not limited to, the following:



- Whether, within the one year prior to the filing of this Complaint, Defendant sent a letter similar to the December 25, 2012 and December 27, 2012 letters to a Class member which misstated or misrepresented the rights of the Class member under the FDCPA
- Whether Plaintiff and The Class was damaged thereby, and the extent of damages for such violation; and

47. As a person that received the December 25, 2012 and December 27, 2012 letters which violated the Fair Debt Collection Practices Act, Plaintiff is asserting claims that are typical of The Class. Plaintiff will fairly and adequately represent and protect the interests of The Class in that Plaintiff has no interests antagonistic to any member of The Class.

48. Plaintiff and the members of The Class have all suffered irreparable harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class action, The Class will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendant will likely continue such illegal conduct.

49. Plaintiff has retained counsel experienced in handling class action claims and claims involving consumer actions and violations of the Fair Debt Collection Practices Act.

50. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendant to comply with federal. The interest of Class members in individually controlling the prosecution of separate claims against Defendant is small because the maximum statutory damages in an individual action for violation of privacy are minimal. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims.

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**COUNT I****FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)****15 U.S.C. §§ 1692 ET SEQ.**

51. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

52. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

53. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

**COUNT II****ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)****CAL. CIV. CODE §§ 1788-1788.32**

54. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

55. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

56. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and

1 Plaintiff be awarded damages from Defendant, as follows:

- 2 • An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- 3 • An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §
- 4 1692k(a)(2)(A);
- 5 • An award of costs of litigation and reasonable attorney's fees, pursuant
- 6 to 15 U.S.C. § 1692k(a)(3);
- 7 • An award of actual damages pursuant to California Civil Code §
- 8 1788.30(a);
- 9 • An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code
- 10 § 1788.30(b);
- 11 • An award of costs of litigation and reasonable attorney's fees, pursuant
- 12 to Cal. Civ. Code § 1788.30(c).

13 57. Pursuant to the seventh amendment to the Constitution of the United States of  
14 America, Plaintiff is entitled to, and demands, a trial by jury.

15  
16 Respectfully submitted,

**Hyde & Swigart**

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18 Date: March 5, 2013

19 By: /s/Jessica R. K. Dorman  
20 Jessica R. K. Dorman  
21 Attorneys for Plaintiff  
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